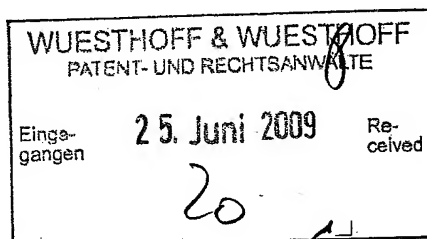




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Application No. 04 770 848.2 - 2215	Ref. EPA-97612	Date 24.06.2009
Applicant Olympus Corporation		<i>Beschl.: 24.10.09</i>

#### Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

**of 4 months**

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

**Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).**



Flores-Jiménez, A  
Primary Examiner  
**For the Examining Division**

Enclosure(s): 2 page/s reasons (Form 2906)  
Automatic Translation of D9: JP2001076128  
D15: JP2003022433

The examination is being carried out on the **following application documents**:

**Description, Pages**

1-6, 8-46	as originally filed			
7a-7c, 47, 48	received on	22.12.2008	with letter of	22.12.2008

**Claims, Numbers**

1-17	received on	22.12.2008	with letter of	22.12.2008
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**Drawings, Sheets**

1/14-14/14	as originally filed
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1. In reference to the new set of claims filed with letter of 22.12.2008 and the argumentation contained therein, the following is to be considered.
2. The applicant considers the subject-matter of originally filed claim 2 related to the texture acquisition device to be the gist of the invention. Furthermore the applicant has introduced the wording "texture acquisition imaging device" and "texture data" and argues that the texture is referred to as the texture of the image.

This may well be the intended case, though there is little support for this univocal understanding in the application as filed (Art. 123(2) EPC). The wording of the application deals only with "texture acquisition device" and the cited passage on page 28 relates to a plurality of imaging devices or the selection of one texture highly correlated with the image, i.e. with values previously stored. Still, there is no mention to the texture of the image. In addition thereto, on page 30, lines 8-19, it is described what is being acquired from the texture acquisition device: frozen, wet, material such as asphalt, gravel, dirt, concrete, and temperature (The

reference given by the applicant to the "known texture analysis" in document 1 (JP3153839B2) does not provide any light as to how the analysis operates). It was this understanding that was previously considered.

It appears however that the applicant intends to interpret that the texture acquisition device refers to the acquisition of the texture of the image because the person skilled in the art would have understood nothing other than that when reading the description. Should that be the case, the texture acquisition device would be a common knowledge for the person skilled in the art, as well as how to derive any information from it because no further details are provided in the application. Consequently, the person skilled in the art would well know at least the state of the art as described in D9 (paragraphs 004 and 005), which was cited in the International Search Report and incorporated in the procedure already in the first communication, and also in D15, hereby introduced by the examiner as an example of what the texture acquisition can be JP2003022433. An automatic translation of D9 and a copy of the document D15 are annexed to this communication.

Therefore, to incorporate the texture acquisition imaging device to the disclosure of D1 does not imply an inventive step (Art. 56 EPC) because, as acknowledged by the applicant, these texture imaging devices are well known in the state of the art (as in D9 and D15).

All other previously objections remain, mutatis mutandis.